## IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA WESTERN DIVISION

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|                           | No. 5:16-CV-00205-F |       |
|---------------------------|---------------------|-------|
| DOMINIQUE CARMICHAEL,     | )                   |       |
| Petitioner,               | )                   |       |
| v.                        | )                   | ORDER |
| UNITED STATES OF AMERICA, | )                   |       |
| Respondent.               | )                   |       |

This matter is before the court on Dominique Carmichael's Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255 [DE-41, -44, 47]. The issues have been fully briefed, and the matter is now ripe for ruling. For the reasons more fully stated below, Carmichael's Motion to Vacate is ALLOWED.

In Carmichael's Motion to Vacate, he argues that he is no longer an armed career criminal as a result of *Johnson v. United States*, 135 S. Ct. 2551 (2015). Mot. Vacate [DE-44] at 5. In particular, Carmichael contends that his North Carolina convictions for common law robbery are no longer valid predicate convictions for the Armed Career Criminal Act ("ACCA"). *Id.* 

Citing *United States v. Gardner*, No. 14-4533, 2016 WL 2893881 (4th Cir. 2016),
Respondent concedes that Carmichael's prior North Carolina convictions for common law robbery are no longer violent felonies for ACCA purposes. Resp. [DE-52] at 2. Thus,
Carmichael lacks the three ACCA predicates to be sentenced as an armed career criminal under 18 U.S.C. § 924(e). *Id.* The Government waives reliance on any procedural defenses and requests that this court vacate Carmichael's sentence and hold a resentencing hearing. *Id.* 

In light of the foregoing, including the Government's concessions, Carmichael's Motion to Vacate [DE-41, -44, -47] is ALLOWED. Carmichael's October 13, 2009 Judgment [DE-23] of conviction and sentence hereby is VACATED, and he is to be promptly resentenced without the § 924(e) enhancement.

SO ORDERED.

This, the **27** day of July, 2016.

MES C. FOX

Senior United States District Judge